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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,568	03/29/2001	Dillis V. Allen	G-38	4968

7590 01/15/2003

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EXAMINER

PASSANITI, SEBASTIANO

ART UNIT PAPER NUMBER

3711

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,568

Applicant(s)

ALLEN ET AL.

Examiner

Sebastiano Passaniti

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JK

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- ~~Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.~~
- ~~- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.~~
 - ~~- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.~~
 - ~~- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).~~
 - ~~- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any claimed patent term adjustment. See 37 CFR 1.704(b).~~

Status

- 1) ☒ Responsive to communication(s) filed on see detailed Office action.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTC)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

This Office action is responsive to the following communications received:

08/24/2001 – Letter styled, "RESPONSE TO REISSUE SUPPLEMENT NOTICE TO FILE MISSING PARTS OF APPLICATION";

01/04/2002 – Letter styled, "NOTICE OF PENDING LITIGATION UNDER MPEP1442.04";

01/11/2002 – Letter styled, "SUPPLEMENTAL NOTICE OF PENDING LITIGATION UNDER MPEP 1442.04";

01/28/2002 – Letter styled, "STATUS INQUIRY";

05/13/2002 – Letter styled, "INFORMATION DISCLOSURE STATEMENT".

The application papers of record in this reissue application have been reviewed.

The following remarks/rejections are deemed pertinent and require applicant's attention:

1. The maintenance fees have not been paid. No action on the merits of this reissue application will be rendered while this application is based upon a lapsed patent.

2. Claims 1-12 are rejected under 35 U.S.C. §251 as lacking basis for reissue, because by statute a reissue application can only be granted for the unexpired portion of the term of the original patent. See In re Morgan, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1983), which holds that reissue applications can only be issued for unexpired patents.

3. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that all errors which are being corrected in the

reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant. See 37 CFR 1.175 and MPEP § 1414.

4. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

5. Claims 1-12 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above. Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

6. The patent sought to be reissued by this application is involved in litigation. Any documents and/or materials which would be material to the patentability of this reissue application are required to be made of record in reply to this action.

Due to the related litigation status of this application, EXTENSIONS OF TIME UNDER THE PROVISIONS OF 37 CFR 1.136(a) WILL NOT BE PERMITTED DURING THE PROSECUTION OF THIS APPLICATION.


A ONE MONTH SHORTENED STATUTORY PERIOD FOR RESPONSE HAS BEEN SET IN WHICH TO RESPOND TO THE ABOVE-MENTIONED REMARKS AND REJECTIONS. This one-month period may be extended only upon a showing of clear *justification* pursuant to 37 CFR 1.136(b).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sebastiano Passaniti whose telephone number is 703-308-1006. The examiner can normally be reached on Mon-Fri (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7768 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Sebastiano Passaniti
Primary Examiner
Art Unit 3711

S.Passaniti/sp
January 8, 2003